Supreme Court of the United States

OCTOBER TERM, 1941

NO. 970

GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL,

v.

JOSEPH LANKSTON WILLIAMS

PETITION FOR REHEARING RE PETITION FOR WRIT OF CERTIORARI

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FIRM FOUNDATION—AUSTIN

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Great Southern Life Insurance Company, a Texas corporation, and Phillips Petroleum Company, a Delaware corporation, pray this Court for a rehearing of their Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, filed on the 24th day of February, 1942, which petition was denied on the 6th day of April, 1942, and in support thereof respectfully show:

I.

The Honorable Supreme Court of the United States erred in not granting the Writ of Certiorari which would have settled an important question of Federal law as to whether that large class of individuals who as landlords lease all of their lands to tenants are "farmers" within the definition contained in Section 75(r) of the Bankruptcy Act, and the granting of which writ would also have settled the status of such class under the Frazier-Lemke Emergency Act preventing intolerable confusion which results from the decisions of the various Circuit Courts of Appeal and inferior courts.

II.

The denial of the petition for certiorari in the instant case is assumed to have been based upon either (1) an acceptance by the Supreme Court of the interpretation of Section 75 (r) as made by the Circuit Court or upon (2) that portion of the Circuit Court opinion which concluded as a proposition of law that the debtor was personally engaged in farming. Either basis is wholly foreign to the fact situation as stated by the Circuit Court.

Basis (1). The Circuit Court's interpretation is:

> "He may be 'primarily bona fide presonally engaged' in any one of those operations, if that is

> his business or occupation, or if the major part of his time and attention are given to its supervision and direction, although the actual work be performed by day labor, those employed by the month commonly known as 'wage hands' or by share croppers who cultivate the land for a share of the crops."

The facts in the instant case even as reported in the opinion itself are wholly foreign to the interpretation or construction quoted above for the debtor exercised no supervision nor direction of any farming activity, all his lands were leased to tenants, and no work whatsoever was performed by day labor, wage hands, or share croppers. The construction above might well apply to a fact situation involving a "cropper" who is a person hired by the landowner to cultivate the land for the landowner and to receive for his labor a share of the crop which he works to make or harvest, and who is as much a servant of the landowner as if his wages were payable in money. A tenant on the other hand has an estate in the land for his term and if he pays a share of the crop as rent it is he who divides the crop which he has raised at his sole expense and turns the landowner's share over to the landowner, having until such division the right of possession of the whole, and being under no supervision nor direction of the landlord whatsoever. The facts in the instant case and those stated in the opinion deal solely with tenants while the construction of the statute in question pertains to croppers or hired hands, all of which will produce great confusion unless this court takes jurisdiction.

Basis (2). The Circuit Court concluded as a proposition of law that:

> "In the present case, we think the facts show that all of Williams business activities were devoted to his farming, and that his entire income was derived from farming operations."

The Circuit Court also states that its opinion is not in conflict with *Shyvers* v. *Security First National Bank of Los Angeles*, 108 F. (2d) 611, Writ of Certiorari denied March 4, 1940, 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015, and reaffirms the Shyvers opinion. The same Circuit Court on the same date it rendered the opinion in the instant case held in *Dimmitt* v. *Great Southern Life Insurance Company, et al*, 124 F. (2d) 40, that a landowner who leases his lands to tenants for cash rent is not engaged in farming.

Obviously there had to be a material distinction in the minds of the Justices of the Circuit Court between the Williams case, the Shyvers case and the Dimmitt case. The confusion which now exists arises not from the legal conclusion quoted above; but arises because the facts found by the Court do not support the distinctions attempted. The three cases reach opposite legal conclusions on facts which are identical in their legal significance. A reading of the facts found by the Court in the instant case clearly reflects that the debtor's activities were those of a landlord just as were the activities of debtor Shyvers and debtor Dimmitt. In all three cases

all of the lands were leased to tenants who had complete dominion and control of the leased premises; and no hired hands, wage hands or croppers are involved.

The facts in the three cases leave no basis for distinction unless it be:

(a) The distance which the landlord lives from his lands, or

(b) Leasing and collecting rentals through agents of the debtor instead of by the debtor in person, or

(c) Visitations to the lands and a discussion of farm activities, or

(d) Leasing lands to tenants for a consideration of a portion of the crops produced by the tenants in lieu of a consideration of cash rentals.

If the distinctions mentioned above, or any of them, be the basis of a proper legal distinction classifying some landlords as farmers under the exact verbiage of Section 75 (r) and classifying other landlords as not farmers under the same verbiage, then the judgment of the Supreme Court in refusing the petition for writ of certiorari is correct and this petition should be likewise denied.

If on the other hand the distinctions (a), (b), (c)

and (d) above, be not a proper basis of legal distinction to classifying some landlords as farmers and others as not farmers under the exact verbiage of Section 75 (r) of the Bankruptcy Act, then the judgment of this Court in denying the petition for writ of certiorari is incorrect.

This is true irrespective of the fact that the ultimate opinion of this Court might be that a landlord who receives the principal part of his income from rentals is a farmer, for such a holding would be flatly in conflict with the Ninth Circuit Court in the Shyvers case and with the Fifth Circuit Court in the Dimmitt case, and the public, the bar, creditors and debtors are entitled to be informed as to the correct status of landlords in order to remove the confusion created by the instant case when considered with the Shyvers and Dimmitt cases. Certainly the question of the inclusion or the exclusion of landlords generally or landlords to a limited degree, as "farmers" within Section 75 (r) of the Bankruptcy Act, is one of such importance as to warrant the Court granting the petition for writ of certiorari and determining the question.

WHEREFORE, it is respectfully urged that this Petition for Rehearing be granted and that the Supreme Court of the United States exercise its jurisdiction and grant a Writ of Certiorari under the seal of this Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in

said Circuit Court had in the case entitled and numbered on its docket, No. 9894, Joseph Lankston Williams, Debtor, Appellant, v. Great Southern Life Insurance Company, et al, Appellees, to the end that this cause may be reviewed and determined by this Court and that the judgment herein of the United States Circuit Court of Appeals, Fifth Circuit, be reversed and the judgment of the United States District Court, Northern District of Texas, Amarillo Division, be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Binford Arney, Counsel for Great Southern Life Insurance Company, and I, Warren M. Sparks, Counsel for Phillips Petroleum Company, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

We further certify that a copy of this Petition for Rehearing is being mailed to Ben P. Monning and E. Byron Singleton, 1014 Fisk Building, Amarillo, Texas, Attorneys for Joseph Lankston Williams, Debtor.

Binford Arney

Warren M. Sparks